

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "DB 'SMC' " NEW DELHI]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND**

SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 36/DDN/2019 (A.Y 2012-13)

Kultar Singh 134, Bhagar Singh Chowk, Ward No. 6, Kichha Udham Singh Nagar, Uttarakhand, PAN No. DIRPS3988H (APPELLANT)	Vs.	ITO 1(4) Rudrapur, Uttarakhand (RESPONDENT)
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Assessee by	Shri Amit Arora, CA
Department by	Smt. Mayank Prabha Tomar, Addl. CIT

Date of Hearing	15.12.2022
Date of Pronouncement	03.01.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Haldwani [hereinafter referred to CIT (Appeals) dated 12.03.2019 for assessment year 2012-13.

2. The assessee has raised the following substantive grounds of appeal:-

“1. The Order passed by learned CIT (Appeals) is based on mere surmise that “effort is being made (on part of the appellant) to co-relate the deposits in the bank account with withdrawals made by the appellant 08 months ago”, which is factually incorrect. These deposits genuinely relate to withdrawals by the appellant

2. No Law of land restricts the assessee to deposit the same amount which was earlier withdrawn. It is as per the understanding and requirement of particular assessee/ individual;

3. No Cogent material has been provided to the appellant by the learned Assessing Officer to suggest that the amount deposited does not relate to the amount withdrawn. In this connection it is submitted that the appellant relies on a number of decided cases wherein it has been held that the adjudicating officer must have relevant material on record in order to reject the explanation submitted by the assessee. The details of such decided cases have been provide in the grounds of appeal herein;

4. None of the case laws/ material has been provided by learned Assessing Officer or by Learned Cit (Appeals) where the addition was confirmed merely for the reason that the amount

withdrawn and deposited are not “same amount”;

5. *Assessee has no other source of income except agricultural income and therefore by no means it can be concluded that the amount deposited is from a taxable source or from a source other than the amount earlier withdrawn;*

6. *No document/ information or material is available with the Deptt. To suggest/ conclude that the amounts deposited pertain to any other source/ activity carried on by the appellant;*

3. In the present appeal, the assessee is aggrieved by the order of penalty order dated 28/09/2015 passed u/s 271(1)(c) read with Section 274 of the Income Tax Act 1961 ('Act' for short) and also order of Ld.CIT(A) dated 12/03/2019 confirming the order of penalty thereby dismissed the appeal of the assessee.

4. The Ld. Counsel for the assessee submitted that in the quantum appeal in ITA No. 35/DDN/2019, the Co-ordinate Bench of the Tribunal vide order dated 31/12/2020 has remanded the issue to the file of the A.O. for de-novo consideration, therefore, the present appeal deserves to be allowed and the penalty order liable to be set aside.

5. The Ld. DR has not disputed the above facts, but submitted that the liberty may be reserved to the A.O. to initiate fresh penalty proceedings if the A.O. makes any additions after the Order of remand by the Tribunal.

6. Considering the above facts and circumstances, in view of the order made in ITA No. 35/DDN/2019 dated 31/12/2020 wherein the Co-ordinate Bench has remanded the issue to the file of the A.O. for de-novo consideration, the impugned penalty order and the impugned order of the CIT (A) are liable to be set aside. Needless to say, that the Ld. A.O. is at liberty to initiate fresh penalty proceedings in accordance with law after passing fresh assessment order.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on : 03.01.2023.

**Sd/-
(B. R. R. KUMAR)
AC.COUNTANT MEMBER**

**Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated : 03/01/2023

MEHTA/R.N, Sr. PS

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI